MONTANA LEGISLATIVE HISTORY

Chapter 352 1997

Bill H _____ S 314 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	C	Hearing Date(s) _____	C
_____	C	2/13	LC ✓
3/21	LC ✓	_____	C
_____	C ✓	2/17	LC ✓
Date Out 3/27	C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/14	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	76	23
4/04	3RD READING CONCURRED	65	34
	RETURNED TO SENATE		
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/11	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 243		
	EFFECTIVE DATE: 07/01/97		

SB 314 INTRODUCED BY CRIPPEN, ET AL. *LC0789 DRAFTER: LANE*

REVISE GENERAL VENUE STATUTES

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO JUDICIARY		
2/13	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED		
2/21	2ND READING PASSED	27	22
2/22	3RD READING PASSED	28	22
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO JUDICIARY		
3/21	HEARING		
4/02	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	57	43
4/05	3RD READING CONCURRED	57	41
	RETURNED TO SENATE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	50	0
4/10	3RD READING CONCURRED AS AMENDED	36	14
4/15	SIGNED BY PRESIDENT		
4/16	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 352		
	EFFECTIVE DATE: 10/01/97		

SB 315 INTRODUCED BY MCCARTHY, ET AL. *LC1003 DRAFTER: MITCHELL*

MODIFY THE DEFINITION OF "CONTAINER SITE"

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO LOCAL GOVERNMENT		
2/18	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED		
2/22	2ND READING PASSED	50	0
2/24	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO NATURAL RESOURCES		
3/21	HEARING		
4/05	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/08	2ND READING CONCURRED	100	0
4/09	3RD READING CONCURRED	99	1

Wm. E. Boharski

BILL NO. 314

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING GENERAL VENUE STATUTES; AND AMENDING SECTIONS 25-2-118 AND 25-2-122, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-118, MCA, is amended to read:

"**25-2-118. Residence of defendant.** ~~Unless otherwise specified in this part:~~

(1) ~~except~~ Except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them ~~may~~ reside at the commencement of the action~~;~~.

(2) ~~if~~ If none of the defendants reside in the state, the proper place of trial ~~is any county the plaintiff designates in the complaint~~ for a contract action is as provided in 25-2-121(1)(b) or (2) and the proper place of trial for a tort action is as provided in 25-2-122(2) or (3)~~;~~.

(3) ~~the~~ The proper place of trial ~~of~~ for an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action."

Section 2. Section 25-2-122, MCA, is amended to read:

"**25-2-122. Torts.** (1) Except as provided in ~~subsection~~ subsections (2) and (3), the proper place of trial for a tort action is:

(a) the county in which the defendants~~,~~ or any of them~~,~~ reside at the commencement of the action; or

(b) the county ~~where~~ in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county ~~where~~ in which the contract was to be performed.

(2) If the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law, or in the first judicial district.

(3) If the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the first judicial district."

-END-

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

SENATE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0289	2/06	2/11		PASS AS AMENDED VOTE:10-0	2-13	2/14
SB0291	BROOKE, VIVIAN 2/06	2/14	ADD SEXUAL ORIENTATION TO MALICIOUS HARASSMENT LAWS	TABLED ON 02/19 VOTE: 7-3		
SB0303	WILSON, WILLIAM 2/07	2/11	ALLOW JUDGE TO REQUIRE CERTAIN OFFENDERS TO HAVE IGNITION INTERLOCK DEVICE	PASS AS AMENDED VOTE: 8-2	2-18	2/18
SB0314	CRIPPEN, BRUCE 2/08	2/13	REVISE VENUE	DO PASS VOTE:6-4	2-17	2/18
SB0318	BECK, TOM 2/08	2/13	DISALLOW ORAL EVIDENCE ON EQUITABLE ESTOPPEL DEFENSE RE: WRITTEN CONTRACT	TABLED ON 02/17 VOTE:9-1		
SB0321	HALLIGAN, MIKE 2/11	2/14	PROVIDE FOR A MOBILE HOME COURT MEDIATOR	PASS AS AMENDED VOTE:7-3	2-17	2/18
SB0327	DOHERTY, STEVE 2/11	2/14	CREATE OFFENSE OF ELECTIONEERING BY PHONE ON ELECTION DAY	PASS AS AMENDED VOTE:8-2	2-17	2/18
SB0329	HALLIGAN, MIKE 2/11	2/14	REVISE LAWS GOVERNING BUSINESS ENTITIES	PASS AS AMENDED VOTE:10-0	2-14	2/14
SB0341	STANG, BARRY 2/12	2/17	FELONY PARTNER OR FAMILY MEMBER ASSAULT	DO PASS VOTE:10-0	2-17	2/18
SB0368	LYNCH, J. D. 2/13	2/18	REGULATE SALE AND IMPORTATION OF VIDEO GAMBLING MACHINES	PASS AS AMENDED VOTE: 10-0	2-18	2/18
SB0369	SWYSGOOD, CHARLES 2/15	2/18	ENDANGERING WELFARE OF CHILDREN INCL. CONTACTING CHILD AG. PARENTS' WISHES	DO PASS VOTE:10-0	2-19	2/19
SB0374	HARGROVE, DON 2/17	2/20	REVISE CHILD SUPPORT LAWS TO COMPLY WITH FEDERAL REQUIREMENTS AND LAW	PASS AS AMENDED VOTE:7-3	2-21 FINANCE & CLAIMS	2/22
	HARP, JOHN		GENERALLY REVISE PRIVATE SECURITIES LITIGATION LAWS			

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 13, 1997, at 8:00 a.m, in Senate Judiciary Room, Room 325.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 318, 2/10/97
SB 314, 2/10/97
SR 16, 2/10/97
Executive Action: SB 289, SB 278, SB 266

EXECUTIVE ACTION ON SB 289

Amendments: sb028901.avl - **EXHIBIT 1**

Motion: **SEN. LORENTS GROSFIELD MOVED TO AMEND SB 289.**

Discussion: **SEN. GROSFIELD** This amendment would move the money from the Crime Victim's Compensation Assistance Account to the General Fund. Their money comes from the General Fund. If the money does not go to the counties under (a) it would then go to the State General Fund.

told him and not have that bank officer have the knowledge that if it is not in the document, he is out of luck.

Closing by Sponsor:

{Tape: 2; Side: a; Approx. Time Count: 10:02}

SEN. BECK explained that he is also a rancher and is familiar with the Graveley case. When Mr. Graveley bought the property, he bought it with the responsibility of making the payments. He did not have enough cash up front to mortgage that piece of property. The final written contract included his home property as security for that piece of land. That was the binding agreement. When the foreclosure started, he couldn't believe what he had done. Now he was losing the whole ranch. People have got to be able to rely on that written contract. He sells his cattle on a handshake, then they prepare a written contract.

HEARING ON SB 314

{Tape: 2; Side: A; Approx. Time Count: 10:02}

Sponsor: **SEN. CRIPPEN, SD 10, Billings**

Proponents:
Page Dringman, Burlington Northern Railroad
John Alke, Montana Defense Trial Lawyers, and Montana Dakota Utilities Company
Russ Ritter, Washington Corporations, and Morrison-Knudson
John Fitzpatrick, Pegasus Gold Corporation

Opponents:
Erik Thueson, Attorney
Don Judge, AFL-CIO
Fran Marceau, United Transportation Union and Brotherhood of Locomotive Engineers
Russell Hill, Montana Trial Lawyers Association
Ted Lang, Northern States Resource Council

Opening Statement by Sponsor:

SEN. BISHOP took over as Chairman of the Judiciary Committee.

SEN. CRIPPEN, SD 10, Billings, introduced SB 314. They had a bill last session that they put in writing, however, there are people on the judiciary who can't understand what they have read. In 1995 the legislature revised section 25-2-122 of the venue statutes to provide a limited number of forums in which an out-of-state corporation could be sued in tort. The rationalization was to recognize that non-resident corporations, which do business in Montana, greatly contribute to Montana's economy and should be treated in a fashion similar to resident corporations. Burlington Northern Railroad has train tracks throughout the western part of the United States.

A plaintiff who was injured in Nebraska and lived in Texas was allowed to file a lawsuit in Montana and also pick the district court which he or she felt was the one that would be most sympathetic and then file the lawsuit there. Last session we amended the law to provide that there were four possible venues for suits against out-of-state corporations. They were: (1) where the plaintiff resides, (2) where the tort occurred, (3) where the resident agent was located, or (4) the First Judicial District, Lewis and Clark County. Since that time a number of cases have gone before district courts dealing with the issue of venue. There have been a variety of opinions. In Great Falls, the district court interpreted the law as set forth in SB 63 and upheld that decision. In Yellowstone County, the District Court Judge held that there were two choices of venue. They could take the choices set out by the legislature or go back to the regular venue section where it states that if none of the defendants reside in the state, the proper place of trial is any county the plaintiff designates in the complaint. That language was not stricken in SB 63. The plaintiffs argued that sections 118 and 122 merely offered alternative venues. This was completely contrary to what the majority of the Legislature intended at that time.

In addition, they also argued that the law passed in 1995 was unconstitutional because it treats those injured by a non-resident individual differently than those injured by a non-resident corporation. The Legislature made a change in 1995 to address the fairness issue by treating non-resident corporations more similarly to resident corporations. SB 314 deals with both section 25-2-118 and 222. On page 1, lines 13 and 14, it clarifies that if none of the defendants reside in the state, the proper place of trial for a contract action would be provided in the section of law dealing with contracts and the proper place of trial for a tort action would be provided in 25-2-122(2) or (3). The amendments start on line 20 and explain the proper place of trial for a tort action which are the same four places of venue. On page 2, (3) explains the proper place for trial when the defendant is a resident of a state other than Montana. This is the county in which the tort was committed, the county in which the plaintiff resides or the first judicial district. This has nothing to do with FELA. They can still file under the federal forum if they choose. This explains the intent of the legislature whereby they provide a list of where a plaintiff can sue a non-resident corporation.

Proponents' Testimony:

{Tape: 2; Side: b; Approx. Time Count: 10:15}

Page Dringman, Burlington Northern Railroad, commented that the venue bill in 1995 sought to change a long standing rule that non-resident corporations could be sued in any county in the state. There were three reasons for the bill.

First, the legislature wanted to treat non-resident corporations in a similar fashion to resident corporations.

Secondly, the legislature wanted to curb the practice of forum shopping which allows you to take your case to a venue you perceive as most favorable for your cause. BN had 29 cases in '93 and '94 which had nothing to do with the state of Montana. The accident didn't happen here and the plaintiff didn't reside here. They were filed in Cascade or Yellowstone County. There were 91 cases filed by Montana residents. Seventy-nine of them were filed in Cascade or Yellowstone County. Sixty-eight had nothing to do with Cascade or Yellowstone County.

The third reason for limiting venue was the burden on certain judicial districts with regard to crowded dockets and the financial impact on state and local taxpayers. The average cost was $7,000 per trial. The '95 amendment has been challenged by plaintiffs in Great Falls, Butte and Billings. They challenged 118 which stated "unless otherwise provided in this part" and then specified general venue rules. The '95 Legislature otherwise provided by specifying venues for actions against out-of-state corporations. The allegation was made that 118 and 122 merely offered alternative choices of venue. A court in Billings and a couple courts in Butte refused to move cases. Great Falls didn't buy that argument and stated the intent of the 95 Legislature was clear. The plaintiff in the Great Falls also alleged that the statute was unconstitutional because of the disparity for those people injured by non-resident individuals. Great Falls held that it was constitutional. These cases have been consolidated and appealed to the Montana Supreme Court and the court has not ruled on the cases at this time. The issues appealed to the Supreme Court were non-constitutional issues. If the Supreme Court upholds the constitutionality of 25-2-122 as written in 95, they may not decide the issue of statutory construction because it is not before them. This amendment eliminates the all county rule so that venue is neutral whether you are suing a non-resident individual or a non-resident corporation. This is a fairness issue.

John Alke, Montana Defense Trial Lawyers, and Montana Dakota Utilities Company, stated that this bill addresses every out-of-state corporation. In the utility rate making business, a federal law was passed which gave intervenors in a very select class of utility rate cases a right to demand compensation for appearing before the Montana Public Service Commission. Montana Dakota Utilities had such a rate case which applied only to the customers in eastern Montana. The rate proceeding was conducted by the PSC in eastern Montana. The intervenor made a claim for compensation under the federal law. That lawsuit was filed in Missoula County. Montana Dakota Utility had to defend that lawsuit in Missoula County where the plaintiff's lawyer lived. The practice of forum shopping brings discredit to the judicial system and the state of Montana.

Russ Ritter, Washington Corporations, and Morrison-Knudson, stated that Washington Construction Company, which operated in Montana and California, recently merged with Morrison-Knudson and its headquarters are now in Boise, Idaho. They have five contracts in Montana.

John Fitzpatrick, Pegasus Gold Corporation, stated they have four operating subsidiaries in Montana. Two are Montana corporations and two are out-of-state corporations. They have been victimized by forum shopping. Forum shopping gives credence to the saying, "When you have got a case to try, it is far better to know the judge than to know the law."

Opponents' Testimony:

{Tape: 2; Side: b; Approx. Time Count: 10:30}

Erik Thueson, Attorney, stated that he represents railroad workers. This bill is here because of bad lawyering. We have attorneys from other states bringing their clients from other states and filing railroad suits in our state courts. They seem to think that gives them an advantage over Burlington Northern. They don't try the cases here. Montana lawyers try cases in Montana for Montanans but the out-of-state lawyers don't. This is the weapon that the railroad has used to convince a lot of people that the venue laws need to be changed.

The good things about the judicial system and the rights that Montanans have is the baby. The problem bad lawyering creates is that the baby is in fear of being drained out with the bath water. If this bill is passed and the last bill is left intact, the baby has gone down the drain.

Bad lawyering can be fixed without hurting Montanans. If we are trying to provide fairness to out-of-state corporations, why are we passing a venue bill which says that when an individual Montanan has to file a lawsuit against an individual, non-corporation, out-of-stater, that their venue rights will be restricted as well? Right now if a drunk driver from out-of-state causes an accident, you can sue them in any county. This bill takes away that right. Corporations and non-corporation out-of-staters could be given a residence. The fair grounds would be that the place of residence for someone who does not have a residence in this state is where they are doing business or where they are paying property taxes.

The United States Supreme Court says you can classify venue laws according to residency. He presented a handout, **EXHIBIT 11.** If we are going to give this benefit to out-of-state corporations, there should be something in return. The United States Supreme Court has decided that an out-of-state railroad can be taxed on its intra-state profits. BN has closed our branch lines and caused an economic impact on our citizens. They have increased their shipping rates. That impacts Montana citizens. The

railroad, as an out-of-state corporation, is not subject to the Montana laws conducting settlement procedures in good faith. If they subjected themselves voluntarily to our unfair settlement practices, the courts wouldn't have to be used. The issue is fairness. Corporations who come into Montana and say they need special legislation, should also recognize their obligations.

Don Judge, AFL-CIO, stated that a couple of years ago a not so funny thing happened on the way to the forum. There was good reason for the law prior to 1995. Governor Racicot, in defending the law, said that subjecting a foreign corporation to a suit in the county in which it does business promotes the legitimate state policy to make its courts accessible to injured persons and to hold accountable a corporation which avails itself of the privilege of doing business in the state.

He also said in a brief filed before the U.S. Supreme Court that the state is not able to give its citizens the same assurance of effective redress for injuries committed by foreign corporations as it can in the case of domestic corporations. Foreign corporations simply do business here. Our mining companies do business here until the profits and minerals are gone and then leave Montana and also leave us to deal with the results of their leaving Montana. The proponents are saying, "Fix the law because people are filing lawsuits against us." Why are people filing lawsuits against them? Because they have committed some wrong against Montanans. We have pipelines being built across Montana today by out-of-state pipeline companies. How would this affect a multi-landowner lawsuit which crosses multi-county jurisdictions who would like to file a joint lawsuit against a pipeline company for faulty construction? In eastern Montana we have had to rebuild a great length of pipeline because of faulty construction. If there were to be a lawsuit from the property owners, would they each have to individually file a lawsuit in each of their counties? Are they prohibited from filing a joint lawsuit? What about the people from Ekalaka to Eureka who want to have access to a judicial system which is close to their home? If you live on the eastern boundaries of Lincoln County you will want to use the judicial system and the attorneys who preside in Flathead County instead of driving all the way back to Libby to file a lawsuit against some out-of-state or out-of-country corporation who came into Montana to do business for you. The proponents of this legislation are concerned that the Supreme Court of the State of Montana is going to defend Montanans against out-of-state corporations and out-of-state individuals. He is proud of the Supreme Court for sending a signal that this might happen. The are going to say that the legislature erred in favor of multi-national, out-of-state corporations and now may error in favor of out-of-state individuals. The responsible way of allowing Montanans access to the courts, their attorneys, and expertise legal advice is to let Montanans chose when dealing with people who are coming to our state to do business in our state and taking profits from our state but do not reside in our state.

Fran Marceau, United Transportation Union and Brotherhood of Locomotive Engineers, presented his written testimony in opposition to SB 314, **EXHIBIT 12.**

Russell Hill, Montana Trial Lawyers Association, stated that the opponents to the 95 legislation made precisely the arguments about unconstitutionality and inconsistency which were made in the courts. The case is on appeal. Forum shopping is the person in Augusta who would rather go to the court in Great Falls or Choteau in the wintertime than come down to Helena.

Ted Lang, Northern States Resource Council, stated this bill is forum shopping in and of itself and has put out-of-state corporations at a distinct advantage over Montanans.

Additional handout - **EXHIBIT 13** - Craig Gilchrist, Brotherhood of Locomotive Engineers.

Questions From Committee Members and Responses:

{Tape: 3; Side: a; Approx. Time Count: 10:53}

SEN. DOHERTY commented that every session we have a BN venue bill. Rather than come back each session for the BN venue bill, wouldn't it be a good idea to get the bar association, the defense bar and the plaintiffs bar to study this. Lawyers are the only ones who deal with venue and understand venue. They could come up with a venue bill which would end all venue bills.

Ms. Dringman stated she did not feel it was a good idea for the bar association to come up with a venue rule. Venue has been set by the legislature. This is not a judicial function.

SEN. DOHERTY commented that the courts have been pretty active at it. There is a conflict between the different district courts. Concerning the cases in Billings and Butte where **SEN. CRIPPEN** feels the courts have erred, did they involve railroad cases or other defendants?

Ms. Dringman stated they involved railroad cases.

SEN. CRIPPEN commented that he would not prefer having the bar association do his work for him. He thought they had a good venue bill a few years ago. He obviously underestimated the ingenuity of the Montana Trial Lawyers Association.

SEN. DOHERTY explained that given the issue is in front of the Montana Supreme Court at this time, why not let the court take care of it?

SEN. CRIPPEN stated that the question answers itself. The Supreme Court ought not to be involved in it. The legislative intent was clearly stated. This bill will state the legislative intent even more clearly. The legislature is charged with the

responsibility to make the laws. It is the responsibility of the courts to interpret them.

SEN. HOLDEN asked **Mr. Alke** if there could be a retroactivity clause placed into the bill to clarify the situations which have arisen since 95?

Mr. Alke stated that was a "nasty" one. With respect to the case at the Montana Supreme Court, because the case has already been argued, a retroactive provision would not affect the outcome of that decision unless the decision was after the bill was passed by both chambers and signed by the Governor. A retroactivity provision would affect the cases out there. **Mr. Judge** has created a straw man by stating that someone who lives on the east side of Lincoln County won't be able to go to Flathead to file a suit. If in fact it was an in state defendant, he can't do that anyway. If the tort is committed in Lincoln County by a Lincoln County resident, he can't go to Flathead County to file his suit. The only case in which that would apply deals with an out-of-state resident.

Closing by Sponsor:

{Tape: 3; Side: a; Approx. Time Count: 11:07}

SEN. CRIPPEN stated the reason for this bill is not bad lawyering, it is because of bad judging. The opponents spoke of bad corporations and hid behind the veil of "Montana for Montanans" and that we should not even consider the rights of these big out-of-state corporations who come in and destroy our state and oppress our citizens. That is not the case at all. Those corporations act as responsible citizens. We tax them. They are entitled to the protection of the laws and rights we have under the Constitution. They are entitled to be treated equitably and fairly. This bill was not initiated by the Burlington Northern. He initiated it because he was appalled and dismayed when he found out that the judge in Yellowstone County clearly ignored the intent of this legislative body when they passed SB 63.

HEARING ON SR 16

Sponsor: **SEN. DOHERTY, SD 24, Great Falls**

Proponents: **GOVERNOR MARC RACICOT**
Pat Chenovak, Administrator of the Supreme Court
Sue Weingartner, Executive Director of the Montana Defense Trial Lawyers
Russell Hill, Montana Trial Lawyers Association

Opponents: None

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ERIK B. THUESON
MICHEAL F. LAMB
JOHN A. KÜTZMAN
JAMES T. TOWE

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 2/13/97
BILL NO. SB 314

February 12, 1997

Senate Judiciary Committee
Capitol Building
Helena, MT 59620

RE: Senate Bill 314

Dear Committee Members:

Thank you for giving me this opportunity to provide some of my comments in writing about SB 314.

This, of course, is a bill "revising general venue statutes." *See* introduction to SB 314. By way of history, these same venue statutes were amended by this legislature in the last session. The last amendments restricted the places where a citizen of Montana could sue an out-of-state corporation, but continued to allow Montanans to sue out-of-state individuals in any county of the state.

The 1995 amendments, however, have come under judicial attack on several constitutional and non-constitutional grounds. Because of this, the railroad industry (primarily BNSF) is back in the legislature asking for further changes.

This time, however, the railroad boldly proposes to take away the time honored rights of <u>all</u> Montanans. Everyone's venue rights are to be restricted-- not just those who must litigate against out-of-state corporations. The question is why our legislature would even consider such special legislation against the interests of Montanans.

I recognize that several distinguished legislators have signed on to Senate Bill 314. I can only assume that they are being misinformed and I can only hope that they will reconsider their positions.

If the legislature is being told that non-railroad corporations are being treated unfairly by allowing Montanans to bring suit in any county, then I suggest that is a problem that can be solved very easily. Currently, out-of-state corporations who are not railroads have an absolute right to remove a case from state court to federal court and thus, resolve any alleged inconvenience. If the legislature is being told that injured people are avoiding this by also making an agent of the corporation a defendant, this problem is easily resolved too. Simply provide that the proper place of trial when this happens is the venue where the agent is located. Virtually all of the time it will be the location of the corporation's business.

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If the legislature is being told that railroads need this protection, then they are being told to negate compelling public policy that has existed since the turn of the century. The federal law that requires disabled railroad workers to file suit for compensation also provides that the railroader may choose the place of trial. As the United States Supreme Court has stated over and over again, these rules are designed to level the playing field. A railroader has a tough row to hoe when suing his or her employer. I suggest that public policy designed to protect Montana railroad workers should not be dumped to benefit the corporations that have taken away their livelihoods.

If there is a concern that lawsuits by out-of-state railroaders against the Burlington Northern are over-burdening Cascade County courts, then I suggest there are two problems with this. First, when these changes were made in the 1995 session, the Great Falls delegation voted against the venue changes -- not for them. Shouldn't the Great Falls legislators be allowed to have a say in this matter?

Second, even assuming that there is a problem with out-of-state railroaders suing in Cascade County, this, too, can easily be remedied. The legislature is constitutionally entitled to restrict the places where non-resident railroad workers can sue the railroad (As opposed to classifying people by "citizenship"). This would allow Montana residents to continue to sue the railroad in the county of their choosing, but would limit the places where non-residents can sue. It would, thus, avoid conflicts with federal law governing railroad cases. It would leave all Montana residents with a right to sue non-resident corporations and individuals in any county. It would, in short, benefit and serve the interests of most Montanans rather than take away the rights of every Montanan. At the same time, it would resolve any argument that out-of-state corporations need further protection. We suggest such an amendment, if this Bill is not going to be killed.

In summary, everyone recognizes the obligation of this legislature to make Montana a better place to live, including improving the economy. The difficulty with this venue bill, however, is that it only furthers the economic interests of the railroad at a cost to all Montanans. I therefore, request that the legislature approach this matter with an open mind. If one keeps the interests of Montanans in mind, the bill should be killed or at least, drastically amended.

Thank you for allowing me to present these comments.

Sincerely yours,

Erik B. Thueson
EBT:emj

F:\WP60\CLIENTS\ERIK\SENATEJU.02

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 2/13/97
BILL NO. SB314

SB314

Mr. Chairman, members of the committee. I am Fran Marceau, State Legislative Director for the United Transportation Union. I reside in Kalispell, Montana.

Last session I opposed a similar bill which was introduced at the request of the Burlington Northern Santa Fe Railroad. The primary purpose of that bill was to prevent injured railroad workers from obtaining a fair settlement by limiting their choice of locations for filing their injury cases.

It is my understanding that SB314 was also introduced at the request of Burlington Northern Santa Fe Railroad because the railroad company is concerned that the Montana Supreme Court may rule that the bill passed last session is unconstitutional. The intention of this bill is to cloud the issues but the end result is the same and that is to limit injured rail workers from obtaining a fair settlement.

Please protect Montanans, not the interests of out of state corporations. I urge you to vote against SB314.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 2/13/97
BILL NO. SB 314

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Division 298

804 10th Ave. North
Glasgow, Montana 59230

Craig A. Gilchrist
Legislative Representative
Phone (406) 228-4820

Serving Since 1863

STATEMENT OF CRAIG A. GILCHRIST
VICE-CHAIRMAN MONTANA STATE LEGISLATIVE BOARD
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Chairman Crippen, members of the committee. For the record I am Craig Gilchrist and I live in Glasgow, Mt.

We are asking the committee to vote against S.B. 314.

We believe this is another attempt to restrict Montana's Citizen's use of our states court system, by CUT-OF-STATE interests.

Similar legislation was passed during the last session and resulted in many dollars of tax payer's money being spent defending this law. The law is now before the Montana State Supreme Court, and the Court, to the best of my knowledge, has not issued a ruling on it. How can this bill change the law before the court reaches it's decision on what, if anything, it finds objectionable. This could result in an unneeded drain on our states funds.

PLEASE VOTE NO ON S.B. 314

THANK YOU

Craig A. Gilchrist

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2/13/97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
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CS-09

DATE 2/13/97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 314 SB 318 SR 16

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
F.G. Marceau	UTU	SB 314		✓
Erik Thueson	Self + Clients	SB 314		✓
David Paoli	Self and Consumers	314/318		✓
Patrick A. Chenovick	MT Supreme Ct	SR 16	✓	
Peg Dringman	MT Chamber Liab. coalition	SB 318	✓	
Peg Dringman	BNSF	SB 314	✓	
Steve Turkiewicz	MT. Auto Dealers Assn	SB 318	✓	
Chris Gallus	MT Chamber	SB 314	✓	
Charles R. Brooks	Billings Chamber	✓	✓	
John Alke	MT. Defense Trial Lawyers	SB 314	✓	✓
John Alke	MDU	SB 314	✓	✓
Don Judge	MT State AFL-CIO	SB 314		✓
Russell B Hill	MT Trial Lawyers	SB 314 SB 318 SR 16	✓	✓
Lee Weingartner	MT Def. Trial Lawyers	SR 16 SB 314	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 17, 1997, at 8:00 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 341, posted February 14
Executive Action: SB 231, SB 247, SB 255, SB 266, SB 291, SB 303, SB 314, SB 318, SB 321, SB 327, SB 341

EXECUTIVE ACTION ON SB 266

Discussion: **Roger McGlenn**. The interested parties met in the Insurance Department on Friday afternoon and tried to work toward a mutually acceptable position on this bill. They wanted to meet again today if you didn't take executive action. There was movement, but not total agreement yet. **Russell Hill**. My impression of the meeting was that the majority of folks there agreed basically that there were certain elements of the bill that everybody could accept. They need to determine how big a

EXECUTIVE ACTION ON SB 314

Amendments: sb 31401.avl **(EXHIBIT #7)**

Motion: SEN. ESTRADA MOVED SB 314 DO PASS.

Substitute Motion: SEN. BARTLETT MOVED TO AMEND SB 314 - sb31401.avl.

Discussion: SEN. BARTLETT. The amendment strikes "first judicial district" because of their workload. The only heavier civil caseload is the 13th Judicial District in Yellowstone County. Lewis and Clark County receives less for criminal caseloads because civil cases are so large, and so I would appreciate the Committee taking this out of the bill.

CHAIRMAN CRIPPEN. No one knows where to find non-resident corporations, and unfortunately this falls on Lewis and Clark county. There was a concerned raised not to do this where the plaintiff lives, but to go to a neutral area. This bill just limits areas where a plaintiff can file such cases. **Leo Berry.** The plaintiffs bar objected to using a resident agent as it's place last session, so as a default it was placed with the 1st Judicial District, because the Secretary of State's office is here, and that's where corporations are registered.

CHAIRMAN CRIPPEN. Some courts have tossed out violations held there, and some haven't. I can see your concerns, however. This is new and we don't know how it's going to work.

SEN. JABS. If we adopt the amendment, would we have only two options? **CHAIRMAN CRIPPEN.** Corporations would still have three, but non-resident persons would only have 2. The 1st Judicial District is first.

SEN. BISHOP. Why not use Fergus County, since it's centrally located?

Vote: SEN. BARTLETT'S MOTION TO AMEND SB 314 FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS BISHOP, HALLIGAN, AND BARTLETT WHO VOTED AYE.

Discussion: SEN. HOLDEN. What is the possibility of an amendment to make this retroactive to the original legislation. **CHAIRMAN CRIPPEN.** We could get into a constitutional problem.

SEN. DOHERTY. Subsection (3) does not affect corporations, but only people, right? Only Subsection (2) affects corporations? Do we need to insert limited liability corporations, partnerships, etc., into Subsection (2)? **CHAIRMAN CRIPPEN.** How do you file actions against a limited liability corporation? **SEN. DOHERTY.** You pick the partner, but where do you go if partner A is a non-resident and partner B is a resident? **CHAIRMAN CRIPPEN.** You would probably pick the managing partner,

who would probably bring in all other partners. If you were a limited liability partner would it apply to Section 1? **Leo Berry**. We had discussed this prior to executive session, and my interpretation is both: Subsection (2) lines 27 for corporations, and limited liability partnerships are covered in Subsection (3). If partnerships were created out of state, either 2 or 3 would apply, as a partner is considered to be an individual.

{Tape: 2; Side: A; Approx. Time Count: #25.0; Comments: None.}

Where the general partner is located is the law that prevails. I'm not sure we can't have limited liability partnerships if we don't establish when they are not in the area of general partnerships (Subsection 3, of 122 -line 13). I believe the partners themselves would prevail.

SEN. DOHERTY. In Subsection (1), where does the plaintiff get to sue the partners of a limited liability partnership which is out of state? In 25-2-122, in this instance, where does a lawyer go to, Subsection (1) or Subsection (3) for guidance? **Valencia Lane**. It would be Subsection (3).

SEN. HOLDEN. We did have in Glendive, a car dealership with another dealership in Beech, North Dakota. If injured, where would I go? **Valencia Lane.** You would go to Subsection (1).

SEN. DOHERTY. We need to clear this up so bonehead attorneys can figure it out.

{Tape: 2; Side: A; Approx. Time Count: #32.0; Comments: None.}

CHAIRMAN CRIPPEN. If you have a limited liability partnership and none are residents of Montana, then you would go to 2-122; (a) would not apply, and (b) might apply if (3) didn't apply.

SEN. DOHERTY. What if there are multiple defendants and one is a resident and one is a non-resident corporation? **Page Dringman, Burlington Northern.** In the case of a resident corporation and a resident individual you could sue either where they reside or at the residence of either of the two defendants. So you could very well be outside the 1st Judicial District. In the case of a non-resident versus a resident corporation and versus a non-resident corporation, you could sue where the non-resident resides, or where the resident defendant resides. The defendant could use forum non convenes to change venue.

Motion/Vote: SEN. ESTRADA MOVED SB 314 DO PASS. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS BARTLETT, BISHOP, DOHERTY, AND HALLIGAN WHO VOTED NO.

{Tape: 2; Side: B; Approx. Time Count: #00.; Comments: 10:20 a.m..}

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 2-17-97
SB NO. SB 314

Amendments to Senate Bill No. 314
First Reading Copy (white)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
February 15, 1997

1. Page 2, lines 1 and 2.
Following: "law" on line 1
Strike: remainder of line 1 through "district" on line 2

2. Page 2, line 5.
Following: "~~:~~"
Insert: "or"

3. Page 2, line 6.
Following: "~~resides~~"
Strike: "~~; or~~"
Insert: "."

4. Page 2, line 7.
Strike: subsection (c) in its entirety

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2-17-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	9am ✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

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SENATE STANDING COMMITTEE REPORT

February 17, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill 314 (first reading copy -- white), respectfully report that Senate Bill 314 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

371452SC.SRF

HOUSE JUDICIARY

- BILL NO -	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0314	CRIPPEN, BRUCE 3/03	3/21	REVISE VENUE	CONCUR AS AMENDED 03/27 VOTE: 9-8		4/02
SB0320	BROOKE, VIVIAN 3/03	3/24	ESTABLISHING THE MONTANA GOVERNMENT ACCOUNTABILITY ACT	TABLED ON 03/27 VOTE: 10-8		
SB0329	HALLIGAN, MIKE 2/21	3/25	REVISE LAWS GOVERNING BUSINESS ENTITIES	CONCUR 03/27 VOTE: 18-2		3/27
SB0341	STANG, BARRY 3/03	3/24	FELONY PARTNER OR FAMILY MEMBER ASSAULT	CONCUR 03/24 VOTE: 17-0		3/25
SB0369	SWYSGOOD, CHARLES 3/03	3/24	ENDANGERING WELFARE OF CHILDREN INCL. CONTACTING CHILD AG. PARENTS' WISHES	CONCUR AS AMENDED 03/27 VOTE: 19-0		4/02
SB0374	HARGROVE, DON 4/03	4/09	REVISE CHILD SUPPORT LAWS TO COMPLY WITH FEDERAL REQUIREMENTS AND LAW	CONCUR AS AMENDED 4/14 VOTE: 11-9		4/15
SB0382	HARP, JOHN 3/03	3/25	GENERALLY REVISE PRIVATE SECURITIES LITIGATION LAWS	TABLED ON 03/27 VOTE: 11-9		
SB0383	CRIPPEN, BRUCE 3/03	3/21	CRIMINAL STREET GANG TERRORISM ENFORCEMENT & PREVENTION ACT	CONCUR 03/27 VOTE: 17-1		3/27

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 21, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Chris Ahner

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 283, SB 314, SB 383, SB 308
POSTED 3/7/97
Executive Action: HB 163 action suspended

EXECUTIVE ACTION ON HB 163

Amendments/Discussion:

{Tape: 1; Side: A; Approx. Time Count: 1.0; Comments: This set of minutes is recorded on six 60-minute tapes.}

SGT. KEN DOVE, Billings Police Department
{Tape: 5; Side: A; Approx. Time Count: 5.0}

JIM KEMBEL, City of Billings
{Tape: 5; Side: A; Approx. Time Count: 6.2}

JOHN CONNOR, Department of Justice/Montana County Attorneys' Association
{Tape: 5; Side: A; Approx. Time Count: 6.8}

CHARLES BROOKS, Yellowstone County Commissioners
{Tape: 5; Side: A; Approx. Time Count: 7.5}

KATHY McGOWAN, Montana Peace Officers' and Sheriffs' Association
{Tape: 5; Side: A; Approx. Time Count: 7.9}

Questions From Committee Members and Responses:
{Tape: 5; Side: A; Approx. Time Count: 8.8-27.8}

Closing by Sponsor: **SEN. CRIPPEN**
{Tape: 5; Side: A; Approx. Time Count: 27.9}

HEARING ON SB 314

Opening Statement by Sponsor: **SEN. BRUCE CRIPPEN**
{Tape: 5; Side: B; Approx. Time Count: 0.1; Comments: REP. McGEE assumed the chair.}

Proponents' Testimony:

RUSS RITTER, Washington Corporation
{Tape: 5; Side: B; Approx. Time Count: 9.8; Comments: CHAIRMAN CLARK reassumed the chair.}

PAGE DRINGMAN, Burlington Northern/Santa Fe Railroad
{Tape: 5; Side: B; Approx. Time Count: 13.4}

DAVID HOFFMAN, Union Pacific Railroad
{Tape: 5; Side: B; Approx. Time Count: 22.8}

CHARLES CLARK, Union Pacific Railroad
{Tape: 6; Side: A; Approx. Time Count: 0.1}

DON ALLEN, Montana Wood Products Association
{Tape: 6; Side: A; Approx. Time Count: 3.3}

CARL SCHWEITZER, Montana Contractors' Association
{Tape: 6; Side: A; Approx. Time Count: 4.4; Comments: This witness did not sign in.}

JOHN FITZPATRICK, Pegasus Gold
{Tape: 6; Side: A; Approx. Time Count: 4.8}

CHRIS GALLUS, Montana Chamber of Commerce
{Tape: 6; Side: A; Approx. Time Count: 5.4}

ANGELA JANACARO, Montana Mining Association
{Tape: 6; Side: A; Approx. Time Count: 5.6}

GAIL ABERCROMBIE, Montana Petroleum Association
{Tape: 6; Side: A; Approx. Time Count: 5.7}

Opponents' Testimony:

RUSSELL HILL, Montana Trial Lawyers Association **EXHIBIT 12**
{Tape: 6; Side: A; Approx. Time Count: 6.1}

DON JUDGE, ALF/CIO
{Tape: 6; Side: A; Approx. Time Count: 12.5}

FRAN MARCEAU, UTU
{Tape: 6; Side: A; Approx. Time Count: 18.4}

JAMES MILLAR, Transportation Union
{Tape: 6; Side: A; Approx. Time Count: 20.3}

TED LANGE, Northern Pacific
{Tape: 6; Side: A; Approx. Time Count: 23.2}

CRAIG GILCHRIST, Burlington Northern
{Tape: 6; Side: A; Approx. Time Count: 23.8}

WAYNE YOUNG, BMWE
{Tape: 6; Side: A; Approx. Time Count: 24.9}

JAMIE TOWE
{Tape: 6; Side: A; Approx. Time Count: 26.5}

Questions From Committee Members and Responses:
{Tape: 6; Side: A; Approx. Time Count: 29.7-Tape 6; Side B; 15.2}

{Tape: 6; Side: B Comments: EXHIBITS 13 and 14 were distributed to the committee.} **EXHIBITS 13-14**

Closing by Sponsor: **SEN. CRIPPEN**
{Tape: 6; Side: B; Approx. Time Count: 15.3}

Motion: **REP. McGEE moved to adjourn.** The meeting was adjourned.

EXHIBIT 12
DATE 3/21/97
SB 314

Directors:

Wade Dahood
Director Emeritus
Elizabeth A. Best
L. Randall Bishop
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Victor R. Halverson, Jr.
Gene R. Jarussi
Micheal F. Lamb
Peter M. Meloy
James P. Molloy
John M. Morrison
Gregory S. Munro
David R. Paoli

Montana Trial Lawyers Association

Russell B. Hill, Executive Director
32 S. Ewing, Suite 312
P.O. Box 838, Helena, Montana 59624
Tel: (406) 443-3124
Fax: (406) 449-6943

Officers:

Gene R. Jarussi
President
John M. Morrison
President-Elect
Michael D. Cok
Vice President
Patricia O. Cotter
Secretary-Treasurer
William A. Rossbach
Governor
David R. Paoli
Governor

March 21, 1997

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59624

RE: Senate Bill 314

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to SB 314, which would ***for the most speculative of reasons*** impose an artificial "county-line" mentality on Montanans injured or killed by out-of-state drunk drivers, con artists, contractors, harvesters, and other individuals.

SB 314 limits the traditional freedom of every Montana citizen to seek restitution in the Montana court closest to their home. For example:

- In Lewis and Clark County, an Augusta rancher will have to travel to a faraway courtroom in Helena, even in winter, rather than Great Falls or Choteau to seek restitution from an out-of-state harvester. *Why?*
- In Jefferson County, a Whitehall service-station owner who gets "stiffed" for engine repairs by an out-of-state motorist will no longer have access to court in Butte, regardless of how much more accessible or convenient it might be. His only option will be Boulder. *Why?*
- In Big Horn County, a Pryor family devastated by an out-of-state drunk driver will have to fight any legal battles in Hardin rather than in Billings, where intensive medical care will most likely occur. *Why?*
- In eastern Roosevelt County, a Froid or Culbertson rancher whose grain or cattle are spilled by an out-of-state trucker will have to drive to the courthouse

in Wolf Point rather than in Sidney or Plentywood. *Why?*

- In Carter County, a Hammond rancher defrauded by an out-of-state dealer who sold him a defective tractor or truck will have to resort to the county courthouse in Ekalaka rather than Broadus. *Why?*

Why do giant out-of-state corporations ask you to ignore the geographical and seasonal realities of Montana life--especially rural Montana life? Why is Burlington Northern asking the Legislature for a law that affects individual (not corporate) defendants from out-of-state?

For no better reason than the speculative possibility that, someday, those out-of-state corporations might need SB 314 to preserve the special treatment which Montana gives to corporate out-of-state defendants.

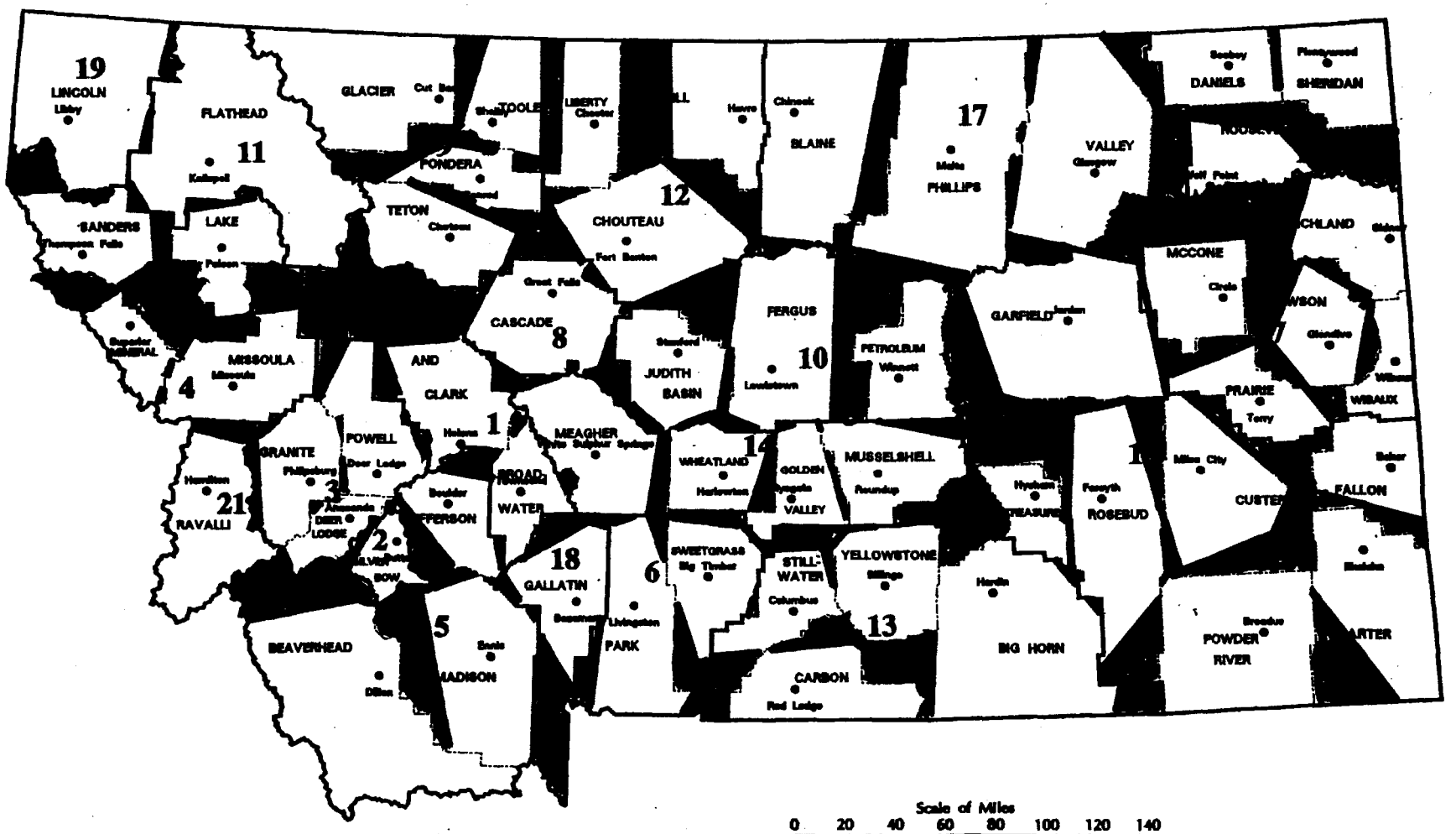
In short, equal protection means, for Burlington Northern and its allies, protecting all out-of-staters from all Montana citizens: drunk drivers who contribute nothing but tragedy to Montana as well as giant corporations who contribute enormously to the state's economy.

Please contact me if I can provide additional information or assistance.

Respectfully,

Russell B. Hill
Executive Director

State of Montana Judicial Districts



Montana State Library
Natural Resource Information System
Map #94mris13e - 10/8/95

EXHIBIT 12
DATE 3/21/97
SB 314

Amendments to Senate Bill No. 314
Third Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
March 19, 1997

1. Page 1, line 15.
Strike: "or (3)"
Insert: "through (4)"

2. Page 1, line 20.
Strike: "and (3)"
Insert: "through (4)"

3. Page 2, line 8.
Insert: "(4) In an action governed by subsection (2) or (3), the court shall change the place of trial upon a motion and showing that the convenience of witnesses or the ends of justice would be promoted by the change."

EXHIBIT 14
DATE 3/21/97
SB 314

Amendments to Senate Bill No. 314
Third Reading Copy

Requested by Sen. Crippen
For the Committee on the Judiciary

Prepared by John MacMaster
March 19, 1997

1. Page 2, lines 1 and 2.
Strike: ", or" on line 1 through "district" on line 2

2. Page 2, line 5.
Following: ";"
Insert: "or"

3. Page 2, line 6.
Strike: "; or"
Insert: "."

4. Page 2, line 7.
Strike: subsection (c) in its entirety

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3/21/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER			✓
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	8:00 ✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	7:30 ✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	7:30 ✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	8:30 ✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 3/21/97

BILL NO. SB 314 SPONSOR(S) Sen. Crippen

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
O	James T. Millar	Butte	ICM
O	Don Judge	Helena	Montana State AFL-CIO
O	Fran Marceau	Kalispell	UTU
O	Craig Gilchrist	Glasgow	BLE
P	Page Dringman	Helena	BNSF
O	Wayne S Young	Wolf Creek	BMWE
O	Russell B Hill	Helena	MTLA
P	David Hoffman	Dillon	Union Pacific
P	Charles Clark	Boise, ID	U.P.R.R.
O	Jamie Towe	Helena, MT	
P	John Fitzpatrick	Helena MT	Pacificorp
P	Don Allen	Helena	MT. Wood Products Assn
O	Ted Lange	Helena	NARC
I	Mary Cigl	Helena	DOC

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 3-21-97

BILL NO. 314 SPONSOR(S) CRIPPEN

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
P	ANGELA JANACARO	2301 Colonial, Helena	MT MINING ASSN
P	Gail Abercrombie	P.O. Box 1186 Helena	MT Petroleum Assn
O	Kate Cholewa	Helena	MT Womens Lobby
O	Mike Equina	HAVRE MT	MTU
P	Russ Ritter	Helena, MT	Wash Coop
P	CHRIS GALLUS	HELENA,	MT CHAMBER

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on March 27, 1997, at 8:30 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Hanson was excused until 10:00 AM.

Members Absent: Rep. Ahner was absent until 12 noon.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action:

TABLED: SB 178, SB 289, SB 320, SB 382
BE CONCURRED IN: SB 201, SB 329, SB 383
BE CONCURRED IN AS AMENDED: SB 369, SB 314, SB 263, SB 219, SB 283
SB 110 TO RECONSIDER - FAILED

Discussion:
{Tape: 1; Side: A; Approx. Time Count: 26.5-Tape 1; Side B; 14.5}

Motion/Vote: **REP. GRIMES moved to table SB 178.** The motion carried 13 - 5; REPS. WYATT, SOFT, McCULLOCH, KOTTEL and TASH voting no. REPS. AHNER and HANSON were absent for the vote and did not leave proxy votes.
{Tape: 1; Side: B; Approx. Time Count: 14.8}

EXECUTIVE ACTION ON SB 283

Motion: **REP. MOLNAR moved SB 283 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 15.2}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 15.7}

Motion: **REP. BOHARSKI moved to amend SB 283 by reinserting the language on page 2.**

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 16-Tape 2; Side A; 8.6}

Motion: **REP. CURTISS moved a substitute amendment to restore the bill to its original form.**
{Tape: 2; Side: A; Approx. Time Count: 8.7}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 9.1-11.8; Comments: REP. CURTISS said she would include "if they are reasonably available" in the substitute amendment.}

Vote: The motion carried 11 - 7; REPS. SANDS, KOTTEL, PEASE, McCULLOCH, WYATT, ELLINGSON, and HURDLE voting no. REP. AHNER voted aye by proxy. REPS. HANSON and SMITH were absent and did not leave proxy votes.
{Tape: 2; Side: A; Approx. Time Count: 11.9; Comments: REP. BOHARSKI changed his vote without objection from the committee from no to aye.}

Motion/Vote: **REP. BOHARSKI moved SB 283 BE CONCURRED IN AS AMENDED.** The motion carried 10 - 7; REPS. SANDS, PEASE, KOTTEL, McCULLOCH, HURDLE, ELLINGSON and WYATT voting no. REP. AHNER voted aye by proxy; REPS. HANSON, SMITH and BERGMAN were absent for the vote and did not leave proxy votes. **REP. GRINDE will carry SB 283.**

EXECUTIVE ACTION ON SB 314

Motion: **REP. SOFT moved SB 314 BE CONCURRED IN.**
{Tape: 2; Side: A; Approx. Time Count: 16.3}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 17.1; Comments: REP. KOTTEL made a point of personal privilege saying that she was approached in an unethical way concerning the vote on this bill and she removed herself from the room during the action on SB 314. She said she was seeking legal advice about how to proceed concerning this issue.}

Motion: **REP. ANDERSON moved the sponsor's amendments.**
{Tape: 2; Side: A; Approx. Time Count: 18.9}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 19.7}

Motion/Vote: **REP. HURDLE moved to table SB 314.** The motion failed by voice vote.

Vote: The motion on the sponsor's amendments carried 12 - 3; REPS. WYATT, HURDLE and MOLNAR voting no. REPS. HANSON, AHNER, KOTTEL, SMITH and BERGMAN were absent for the vote.
{Tape: 2; Side: A; Approx. Time Count: 21.8}

Motion: **REP. BOHARSKI moved SB 314 BE CONCURRED IN AS AMENDED.**
{Tape: 2; Side: A; Approx. Time Count: 22.0}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 22.1-Tape 2; Side B; 0.7}

Motion: **REP. ELLINGSON moved to amend SB 314.**
{Tape: 2; Side: B; Approx. Time Count: 0.8}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 2.5}

Vote: The motion failed 7 - 9. REPS. ELLINGSON, HURDLE, WYATT, SANDS, PEASE, McCULLOCH and CURTISS voting aye. REP. HANSON voted no by proxy. REPS. AHNER, SMITH, BERGMAN and KOTTEL were absent for the vote but did not leave proxy votes.
{Tape: 2; Side: B; Approx. Time Count: 3.7}

Discussion:
{Tape: 2; Side: B; Approx. Time Count: 5.7}

Vote: The motion to concur in SB 314 as amended carried 9 - 8; REPS. MOLNAR, ELLINGSON, HURDLE, PEASE, SANDS, WYATT, McCULLOCH, and CURTISS voting no. REP. HANSON voted aye by proxy. REPS. AHNER, KOTTEL and SMITH were absent for the vote and did not leave proxy votes.
{Tape: 2; Side: B; Approx. Time Count: 9.5}

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3/27/97

8:30 AM

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	noon ✓	✓	
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	8:40 ✓		
REP. H.S. "SONNY" HANSON	10:00 ✓		✓
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

HOUSE STANDING COMMITTEE REPORT

March 27, 1997

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 314** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read: **Carried by: Rep. Anderson**

1. Page 2, lines 1 and 2.
Strike: ", or" on line 1 through "district" on line 2

2. Page 2, line 5.
Following: ";"
Insert: "or"

3. Page 2, line 6.
Strike: "; or"
Insert: "."

4. Page 2, line 7.
Strike: subsection (c) in its entirety

-END-

3/27
mp

Committee Vote:
Yes 9, No 8.

671500SC.Hgd

SENATE BILL NO. 314

INTRODUCED BY CRIPPEN, ANDERSON, ELLIS, HARP, BECK, BENEDICT, JABS, HOLDEN, BAER, TASH, CRISMORE, THOMAS, CURTISS, GRADY, GRINDE, OHS, FELAND, MOHL, KASTEN, SMITH, GROSFIELD, KEENAN, BRAINARD, SWYSGOOD, SOFT, BERGMAN, ESTRADA, CLARK, MCNUTT, AHNER, BOHARSKI, BARNETT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING GENERAL VENUE STATUTES; AND AMENDING SECTIONS 25-2-118 AND 25-2-122, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-2-118, MCA, is amended to read:

"25-2-118. Residence of defendant. ~~Unless otherwise specified in this part:~~

(1) ~~except~~ Except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them ~~may~~ reside at the commencement of the action~~;~~.

(2) ~~if~~ If none of the defendants reside in the state, the proper place of trial ~~is any county the plaintiff designates in the complaint~~ for a contract action is as provided in 25-2-121(1)(b) or (2) and the proper place of trial for a tort action is as provided in 25-2-122(2) or (3)~~;~~.

(3) ~~the~~ The proper place of trial ~~of~~ for an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action."

Section 2. Section 25-2-122, MCA, is amended to read:

"25-2-122. Torts. (1) Except as provided in ~~subsection~~ subsections (2) and (3), the proper place of trial for a tort action is:

(a) the county in which the defendants~~,~~ or any of them~~,~~ reside at the commencement of the action; or

(b) the county ~~where~~ in which the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county ~~where~~ in which the contract was to be performed.

(2) If the defendant is a corporation incorporated in a state other than Montana, the proper place

of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law~~, or in the first judicial district~~.

(3) If the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed; OR

(b) the county in which the plaintiff resides~~; or~~.

~~(c) the first judicial district.~~"

-END-